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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/930,235 02/23/98 EITRICH

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EXAMINER

LOVERING, R

ART UNIT

PAPER NUMBER

1721
DATE MAILED:

02/16/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/930,235

Applicant(s)

EITRICH ET AL

Examiner

LOVERING

Group Art Unit

1721

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on DEC 2, 1998.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-3 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3 is/are rejected.
- ☒ Claim(s) 2 AND 3 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The request filed on December 2, 1998 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/930,235 is acceptable and a CPA has been established. An action on the CPA follows.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Schambil et al. DE 4,010,393, esp. Beispiele 1-2; Tabelle 1; and abstract.
4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Allard et al. 5,616,331, esp. Ex. 1; paragraph bridging col's. 2 and 3; col. 5, lines 47-65; and col. 6, lines 39-47.
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is vague and indefinite as to scope in "further processing steps". The quoted expression is broad enough to read on breaking, concentrating, diluting, adding preservative(s), adding a gelling agent, etc., and the specification doesn't specify which further processing steps are contemplated by applicants.

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7. Claims 2 and 3 are objected to for using "characterized in that" instead of ~~of~~ⁱⁿ, which process comprises-- and in using passive instead of active verb forms.

8. The disclosure is objected to because of the following informalities: The specification lacks: --BRIEF DESCRIPTION OF DRAWINGS--.

Appropriate correction is required.

9. Applicants are required to insert the following sentence between lines 4 and 5 on page 1 of the specification: --This application is a 371 of PCT/EP96/00968 filed March 7, 1996--.

10. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

11. Any inquiry concerning this communication should be directed to Examiner Lovering at telephone number (703) 308-0443.

LOVERING/jkl
February 11, 1999

Richard D. Lovering
RICHARD D. LOVERING
PRIMARY EXAMINER
GROUP 12001700